

# Notice of Allowability

Application No.

10/049,395

Examiner

Rip A. Lee

Applicant(s)

MCMICHAEL ET AL.

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to April 15, 2004.
2. ☒ The allowed claim(s) is/are 41,44-48,53,54 and 56-72.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### **DETAILED ACTION**

This office action follows a request for reconsideration on April 15, 2004. Applicants have amended claims 41 and 44-48. Claims 1-40, 42, 43, 49-51, and 73-83 have been canceled.

### ***Election/Restrictions***

Claims 53, 54, 56, 70, and 71, previously withdrawn from consideration, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Gregory Porter on May 5, 2004.

Claims 53, 54, 56, 70, and 71 have been entered into the record following rejoinder of claims.

Cancel claims 52 and 55.

Change dependency of claim 70 so that it depends from claim 41.

Examiner's Amendment (cont'd)

Claim 41, line 3      delete "about"

Claim 41, line 5      delete "about"

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*Examiner's note:* Use of the term "about" in an open-ended range renders the claim vague and indefinite because it is not clear where the upper and lower bounds of the range actually lie. Claims containing such language are subject to rejection under 35 U.S.C. 112, second paragraph. See also MPEP § 2173.05(b) and (c).

***Allowable Subject Matter***

The following is an examiner's statement of reasons for allowance: Claims 41, 44-48, 53, 54, 56, 57-72 are allowed over the closest reference, WO 98/10015 to Park *et al.*

The present invention is drawn to a composition comprising (A) polymer particles comprised of a substantially random interpolymer comprising: (1) polymer units derived from (i) at least one vinyl/vinylidene aromatic monomer or (ii) a combination of one vinyl/vinylidene aromatic monomer and at least one hindered aliphatic/cycloaliphatic vinyl or vinylidene monomer, and (2) polymer units derived from (i) ethylene or (ii) aliphatic alpha olefin monomer having 3-20 carbon atoms, and (B) an effective amount of anti-blocking agent mechanically adhered thereto; the polymer particles have a 1 mm penetration temperature of less than 75 °C and/or an unconfined yield strength of greater than 15 lb/ft<sup>2</sup> (73 kg/m<sup>2</sup>).

Park *et al.* teaches a thermoplastic blend comprising an interpolymer comprising: (1) polymer units derived from (i) at least one vinyl/vinylidene aromatic monomer or (ii) a combination of one vinyl/vinylidene aromatic monomer and at least one hindered aliphatic/cycloaliphatic vinyl or vinylidene monomer, and (2) polymer units derived from at least one aliphatic alpha olefin monomer having 2-20 carbon atoms. The patent described melt-blending a pre-blend of granulated ethylene-styrene copolymer and 0.02 phr of talc in an extruder. The process does not result in a *particle* with talc mechanically adhered thereto, as recited in the present claims. Consequently, there is no disclosure in Park *et al.* of particulate product having 1 mm penetration temperature of less than 75 °C and/or an unconfined yield

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strength of greater than 15 lb/ft<sup>2</sup> (73 kg/m<sup>2</sup>). The skilled artisan would not have found it obvious to modify the processes described in the prior art to arrive at the product of the instant invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

The prior art made of record but not relied upon is considered pertinent to the Applicant's disclosure. The following references have been cited to show the state of the art with respect to interpolymers comprising polymer units derived from one vinyl/vinylidene aromatic monomer or a combination of one vinyl/vinylidene aromatic monomer and at least one hindered aliphatic/cycloaliphatic vinyl or vinylidene monomer, and polymer units derived from alpha olefin monomers.

U.S. Patent No. 6,380,294 to Babinec *et al.*

U.S. Patent No. 6,376,095 to Cheung *et al.*

U.S. Patent No. 6,329,450 to Ogoe *et al.*

U.S. Patent No. 6,190,768 to Turley *et al.*

U.S. Patent No. 6,156,842 to Hoenig *et al.*

WO 01/12716 to McMichael *et al.*

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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May 5, 2004



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